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**Remarks of Massachusetts Environmental Affairs Secretary Stephen R. Pritchard  
Before The Legislature's Joint Committee on Bonding, Capital Expenditures,  
and State Assets**

**March 8, 2005**

**House Bill 4500, An Act Authorizing the Leasing of Certain  
Real Property Known as Outer Brewster Island**

Good morning, Chairman **Montigny, Dean Flynn**, and through you to the Members of the committee. Thank you for the opportunity to speak with you today, on behalf of the Administration, about House Bill 4500. I appreciate that the Committee has taken me out of turn.

Outer Brewster Island. It is both a state and national park. In 1970, the Massachusetts legislature authorized the Department of Conservation and Recreation's predecessor to acquire Outer Brewster and 12 other harbor islands for conservation and recreation purposes, creating the Boston Harbor Islands State Park. These islands are owned by DCR, and in 1996 became part of a uniquely structured national park system called the Boston Harbor Islands National Park Area. My agency – DCR – is the owner of a total of 16 islands and, in my position as Secretary of Environmental Affairs, I serve as a member of the 13-member Partnership that was created by the 1996 act of Congress to administer the Boston Harbor Islands National Park.

I am here today because I am concerned about this bill (as drafted) in a number of ways and - as an overarching matter - because it essentially puts the cart before the horse. Allow me to explain.

The bill directs the Commissioner of DCAM to lease the Outer Brewster Island for 99 years to a very circumscribed potential bidder. A 99 year lease is a disposition of public parkland under Article 97 of the Articles of Amendment to the Massachusetts Constitution.

The bill requires a disposition of state parkland for an industrial purpose without a full understanding of the historical and legal impacts, the impacts of the proposed development on the island itself, the impacts of such industrial use on the harbor resources, and, of particular concern to EOEA and DCR, the impacts on the mission of the Boston Harbor Islands State and National Park system.

For example, Outer Brewster is part an ecosystem that includes a cluster of 7 harbor islands managed under the General Management Plan for the National Park as a “Natural Feature Emphasis” area; it is within approximately 100 yards of Middle Brewster Island and is less than one mile from the National Historic Landmark of Boston Light. These are just a few of the issues that should be considered in any disposition. The bill is a directive to dispose of land so that a third party can develop it, without first having the benefit of a substantive review of the proposed project and its public purpose, its environmental impacts, its impacts on other uses and activities in the area such as recreational and commercial boating, fishing and lobstering, its impact on historic and cultural resources, and absent any assessment of feasible alternatives to the proposed project. Because we do not have the answers to these questions, and because we have the existing processes in place to accomplish such reviews, the bill as drafted is, in my view, both premature and unnecessary.

The Massachusetts Environmental Policy Act (MEPA) is intended to ensure that feasible alternatives to a proposed project are carefully considered through an open public comment process before state agency actions are taken. This bill, however, directs that a 99-year lease be bid out within 60 days of the effective date of the Act and that a bidder subsequently be selected within 30 days. Granted, the bill provides for some altered form of MEPA review but only after the lease has already been signed (prior to actual construction) –effectively sealing the island’s fate as an industrial facility for the next century without the benefit of a thorough review. For development projects, MEPA review is designed to precede any agency action. This bill represents a rush to dispose of not just a parcel of state-owned property but a significant component of a state and national park system - a clear contravention of the very purpose of MEPA.

Proponents have argued that FERC will review the project and conduct National Environmental Policy Act (NEPA) review at the federal level. Again, this is after the threshold decision is made to convert protected parkland to industrial use and therefore does nothing to address our concern. Under this bill, the NEPA review –like the MEPA review- would occur only after the Commonwealth has already disposed of its land and, moreover, would relinquished our unique standing to ensure a full review and consideration of the project impacts on the Commonwealth’s citizens, on the environment, and on the commercial interests in Boston Harbor.

The language of the bill is problematic on a number of other levels as well.

For example, the bill affirms that “the property consists in part of flats and submerged lands in which the public and the commonwealth have certain rights, including, but not limited to, in the case of the commonwealth, fishing, fowling and navigation and that the property is used as parkland.” After asserting these public rights, the bill makes a finding that “**the construction and operation of the facilities authorized by this act will not be detrimental to the aforementioned public rights, including navigation, and will have a *de minimus* affect [*sic*] on the remaining lands and waters of Boston Harbor.**” It goes on to conclude that “[t]he rights of the public and the commonwealth in the property are hereby relinquished while the lease authorized by the act is in effect.”

The impact of these words is enormous.

First, they undo laws that go back so far in time that they nullify public rights in land granted by the King of England to the Massachusetts Bay Colony.

Second, they declare by fiat what no one knows at this time because no review has been conducted.

Third, they create an inconsistency by declaring on the one hand that the project's impacts will not affect the public's and the Commonwealth's rights, and on the other hand unilaterally declare that such rights will actually be a nullity for 99 years.

Finally, these words challenge the arguments that meaningful state and federal review can occur after you enact this bill.

I am also concerned that in the rush to dispose of our parkland, we will run afoul of other requirements of federal law. Federal law requires that Outer Brewster be managed "in accordance with the provisions of law generally applicable to units of the National Park System," including the 1916 National Park System Organic Act, as amended, and others. This was reinforced by a letter to me dated November 18, 2005, in which the National Park Service has advised that "removing land from park use for an industrial facility is inconsistent with legislative and policy mandates for managing the Boston Harbor Islands." Additionally, both the state and federal government agree that Outer Brewster was planned, developed and acquired with federal Land and Water Conservation Funds. The Commonwealth has signed contracts with the federal government prohibiting conversion of this and other Boston Harbor islands to other than public outdoor recreation uses without prior approval of the federal government. The Commonwealth cannot ignore these obligations and commitments, and it is not sufficient for this body to accept others interpretation of the applicable laws and policies on this point.

In closing, I am mindful of our regional energy needs and our on-going need for gas supplies. The market is clearly demonstrating that need by the fact that, currently, there are at least 15 other LNG facility proposals under review in eastern Canada and the northeastern United States. No one, however, believes that all of these proposed projects will be built. Some combination of these projects, after a substantive public review (as well as the judgment of the market itself) can serve the energy needs of Massachusetts for the future.

In this instance, however, we must not act before we think, before understanding the full consequences of our actions, and before a thorough, deliberate, and inclusive public review of the public interests at stake – be they the long term preservation of our natural resources, the provision of public recreational opportunities or the security and availability of the Commonwealth's energy supply.

Thank you.